IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.Rev.Pet.No. 1010 of 1999()

CRA.256/1997 of ADDL.SESSIONS COURT, KOZHIKODE
CC.165/1995 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
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REVN. PETITIONERS/APPELLANTS/ACCUSED:
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1. MUHAMMED, S/o.HASSAN KUTTY,
   KILIYANTHODE HOUSE, MEPPADI AMSOM,
   MOOPPAYINAD DESOM.

2. AZEEZ, S/o.KOYA, KORAMBANKALATHIL HOUSE,
   MEPPADI AMSOM, MOOPPAYINAD DESOM.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:
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1. THE SUB INSPECTOR OF POLICE, ATHOLI,

2. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. R.P. No.1010 of 1999

Dated 19th June, 2007

ORDER

The revision petitioners stand convicted for the offences under sections 457 and 380 IPC and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for three months for the offence under section 457 IPC and also sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/- and in default to undergo simple imprisonment for one month each for the offence under section 380 IPC. The prosecution case is that on 31-8-94, the accused broke open the locks of the rolling shutters of the shop owned by the de facto complainant and committed theft of one amplifier, one emergency light and one bush radio which were entrusted for repairs and some audio cassette covers. The prosecution evidence consisted of the testimony of PWs 1 to 7, Exts.P1 to P5 and M.Os 1 to 10.

The defence examined DWs 1 and 2 and Exts.D1 and D2.

2. The prosecution case is that in the intervening night of 8-9/ 1994 they were arrested at about 1.15 a.m and from their person two bags were recovered and therein M.Os 1 to 5 and 7 to 10 were found which included plastic cover, chisel, Axo-blade and iron rod.

3. Counsel for the revision petitioner stressed the fact that on 8-9-1994, DWs 1 and 2, wives of the accused had filed applications before the court under section 97 Cr.P.C alleging that their husband have been called to police station on 31-8-94 and thereafter they are not seen. Exts.D1 and D2 are copies of the above applications. The accused were produced on 9-9-94 at 4 p.m before the Magistrate alleging that in the intervening night of 8-9/94 the accused were arrested and the articles were recovered. It is after the filing of the applications under section 97 Cr.P.C., the petitions by the wives of the accused, they have been produced on the next day at 4.30 p.m mentioning that they were arrested in the night. I find

that the above aspect render the prosecution version of the arrest and recovery quite suspicious. I find that the courts below have not considered this aspect in the proper perspective.

In the circumstances, I find that the accused is entitled to the benefit of doubt. The conviction and sentence imposed by the courts below is set aside. The accused are acquitted. The Crl.R.P is allowed.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.R.P. 1010 OF 1999

ORDER

19-6-2007.